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[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: FCP - 175906

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 30, 2016, under Wis. Admin. Code, §DHS 10.55, to review a decision by the Care Wisconsin First, Inc. to reduce Family Care Program (FCP) services, a hearing was held on September 20, 2016, by telephone. A hearing set for August 31, 2016 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner continues to meet a nursing home level of care for FCP purposes.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
Care Wisconsin First, Inc.  
P.O. Box 14017  
Madison, WI 53708-0017

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Trempealeau County.
2. Petitioner has been eligible for the FCP under the nursing home level of care. Care Wisconsin is her managed care organization (MCO).

3. On July 19, 2016 an annual functional screening took place. Following the screening petitioner's level of care was changed to non-nursing home. She remained eligible for the FCP but with a reduced benefit package. Petitioner was informed about the change by a notice dated July 21, 2016, to be effective August 6. Petitioner's benefits were kept in place pending this decision.
4. A re-screen was done on August 22 with the same result.
5. In the re-screen on August 22 petitioner was found to need assistance with bathing and mobility. She uses adaptive equipment in the bath but also gets assistance with tub transfers from a neighbor. She uses a walker to get around but the screener noted that she also leans on walls and furniture for balance while moving about.
6. Petitioner requires assistance with meal preparation, laundry/chores, and transportation.

### DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

Wis. Admin. Code, §DHS 10.33(2) provides that an FCP applicant must have a functional capacity level of comprehensive or intermediate; I note here that Wis. Stat., §46.286, uses the terms "nursing home" and "non-nursing home" levels just as the agency in this case. If the person meets the comprehensive (nursing home) level, she is eligible for full services through an MCO, including Medical Assistance (MA). Wis. Admin. Code, §DHS 10.36(1)(a). If the person meets the intermediate (non-nursing home) level, she is eligible for full services only if she is in need of adult protective services or she is financially eligible for MA. Wis. Admin. Code, §DHS 10.36(1)(b). A person eligible under the non-nursing home level is eligible for less FCP services.

Wis. Admin. Code, §DHS 10.33(2)(c) describes comprehensive functional capacity:

*(c) Comprehensive functional capacity level.* A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment....

Wis. Admin. Code, §DHS 10.33(2)(d) describes intermediate functional capacity:

*d) Intermediate functional capacity level.* A person is functionally eligible at the intermediate level if the person is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others, as is evidenced by a finding

from application of the functional screening that the person needs assistance to safely or appropriately perform either of the following:

1. One or more ADL.
2. One or more of the following critical IADLs:
  - a. Management of medications and treatments.
  - b. Meal preparation and nutrition.
  - c. Money management.

ADLs include bathing, dressing, eating, mobility, and transferring. Wis. Admin. Code, §DHS 10.13(1m). IADLs include meal preparation, medication management, money management, laundry and chores, telephone, and transportation.

The Department has developed a computerized functional assessment screening system. The system relies upon a face-to-face interview with a quality assurance screener who has at least a bachelor of science degree in a health or human services related field, with at least one year of experience working with the target populations (or, if not, an individual otherwise specifically approved by the Department based upon like combination of education and experience). The screener asks the applicant, or a recipient at a periodic review, questions about his or her medical conditions, needs, cares, skills, activities of daily living, and utilization of professional medical providers to meet these needs. The assessor then submits the Functional Screen Report for the person to the Department's Division of Disability and Elder Services. The Department enters the Long Term Functional Screen data into a computer program to see if the person meets any of the required levels of care.

If the assessor enters information into the functional screen correctly, then it is assumed that the computer will accurately determine the level of care. However, that has not proven to be the case, and the Department has acknowledged that there are discrepancies in some cases between the code definition and the functional screen results.

In this case the August 22, 2016 functional screener found that petitioner needs assistance with two ADLs and three IADLs. Under number 2 of the definition of comprehensive (nursing home) level of care, petitioner remains eligible for FCP under the nursing home level. I thus will order the agency to continue petitioner's eligibility at the nursing home level.

### **CONCLUSIONS OF LAW**

Petitioner remains at the nursing home level of care for FCP purposes because she is unable to complete two ADLs and three IADLs safely without assistance.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to Care Wisconsin with instructions to continue petitioner's FCP eligibility under the nursing home level of care, and to provide appropriate services with that level's benefit package. The agency shall take the action within 10 days of this decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 27th day of September, 2016

\s \_\_\_\_\_  
Brian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 27, 2016.

Care Wisconsin First, Inc  
Office of Family Care Expansion  
Health Care Access and Accountability  
[REDACTED]